



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,234	11/25/2003	David W. Herbage	A310429.1US	6684

7590

07/12/2007

H. Roy Berkenstock  
Wyatt, Tarrant & Combs, LLP  
Suite 800  
1715 Aaron Brenner Drive  
Memphis, TN 38120-4367

EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED: 07/12/2007

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief  
(37 CFR 41.37)**

Application No.

10/722,234

Applicant(s)

HERBAGE, DAVID W.

Examiner

Michelle (Shelley) Clement

Art Unit

3641

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 16 March 2007 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.  
**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

  
Michelle (Shelley) Clement  
Primary Examiner  
Art Unit: 3641

Continuation of 10. Other (including any explanation in support of the above items): In regards to 4 above: A CONCISE explanation of the subject matter defined in the independent claims is required. Each limitation of the claim needs to be "mapped" to the specification by paragraph number, page and line number or drawing reference characters. For means-plus-function language in the independent claims, or separately argued dependent claims, a description of the corresponding structure in the specification must be included with paragraph number, page and line number or drawing reference characters. Extraneous information not specifically in the independent claims should not be included or should be extremely limited.

In regards to appellant referring to an online dictionary in the appeal brief on page 18, but it is noted has not listed the term "Doppler effect" in the evidence relied upon section. 37 CFR 41.37(c)(1) states,

"Any appendix containing copies of any evidence submitted pursuant to 1.130, 1.3.1 or 1.1.32 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See 41.33 for treatment of evidence submitted after appeal."

Further, 37 CFR 41. 337(c)(2) states, "A brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence." Appellant's attention is directed to 37 CFR 41.33 for guidance as to when evidence can be entered after the filing of a notice of appeal.

If Appellant has previously timely submitted the evidence referred to above, Appellant should provide a copy in the evidence appendix and a statement of when the evidence was entered by the examiner. If the evidence referred to above, has not been previously entered Appellant should consult 37 CFR 41.33 and/or remove the reference to unentered evidence for the appeal brief.

It is also noted that appellant has included arguments directed to objections to the drawings; appellant is reminded that this is not an appealable matter but rather a petitionable matter.